

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

RICHARD LEE CARMICHAEL,

Plaintiff,

v.

ROMEO ARANAS, et. al.,

Defendants.

Case No. 3:17-cv-00025-MMD-WGC

ORDER

Pending before the court is Plaintiff's Emergency Motion for Temporary Restraining Order/Preliminary Injunction. (Electronic Case Filing (ECF) Nos. 3, 3-1, 4, 4-1.)¹ Defendants have filed a response. (ECF Nos. 14, 16-1 to 16-31, 18, 20-1 to 20-31.)² Plaintiff filed a reply. (ECF Nos. 22, 23.)³

The court will issue a separate minute order setting this motion for a hearing.

A. Supplement to Opposition

On or before **5:00 p.m. on March 20, 2017**, Defendants shall supplement their opposition with the following:

(1) A new sealed⁴ exhibit that contains *all* of Plaintiff's medical records, unusual occurrence reports, kites, letters and grievances *related to his spinal condition* that is at issue in the motion for temporary restraining order/preliminary injunction, up to the present time, in

¹

ECF Nos. 3, 3-1 and 4, 4-1 are identical.

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ECF Nos. 14, 16-1 to 16-31 and 18, 20-1 to 20-31 are also identical.

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ECF Nos. 22 and 23 are identical.

⁴

There is no need to file a separate motion for leave to file the exhibit under seal, as the court finds that compelling reasons, including protecting Plaintiff's privacy in the sensitive information contained in his medical records, justify sealing these documents.

1 chronological order.⁵ It appears that Defendants omitted at least one pertinent record from their
2 submission— a medical order dated December 21, 2016 stating that Plaintiff has advanced
3 cervical spondylosis, was awaiting a surgical evaluation, and that a double mattress would be
4 medically appropriate. (*See* ECF No. 22 at 97.) The court wants to make sure it has all records
5 relevant to Plaintiff's spinal condition in advance of the hearing, and not just those records
6 Defendants have chosen to focus on. This shall include records relating to a visit with an
7 orthopedic surgeon on March 8, 2017, referenced in Plaintiff's reply brief. (*See* ECF No. 22 at
8 10.) The records should be accompanied by an authenticating declaration by the custodian of
9 records, which was absent from the original submission of medical records. With respect to any
10 relevant grievances, Defendants shall submit not only NDOC's inmate grievance history report,
11 but the actual grievance documentation.

12 (2) NDOC policies and procedures concerning transporting severely ill/injured inmates
13 and policies and procedures for moving the property of severely ill/injured inmates which were
14 not addressed in Defendants' opposition to Plaintiff's motion despite District Judge Du's clear
15 instruction to do so (see ECF No. 5 at 13:26-28). If there are no formal policies and procedures,
16 Defendants shall submit a declaration by a person with personal knowledge of informal policies
17 and procedures on these topics.

18 **B. Appearance at Hearing**

19 The Attorney General's Office shall ensure that defendant Dr. Romeo Aranas appears
20 telephonically and is prepared to testify at the hearing. The Attorney General's Office shall also
21 ensure that a person knowledgeable regarding the prison's policies on transporting and moving
22 the property of severely ill/injured inmates appears telephonically and is prepared to testify at the
23 hearing.
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Many of the records submitted by Defendants relate to his urology condition, which is not at issue in Plaintiff's motion as it focuses on his spinal condition and his transport to another NDOC facility in light of this condition, as well as his ability to lift his property.

1 **C. Plaintiff's Review of Medical Records and Access to Medical Records at Time of**
2 **Hearing**

3 Plaintiff shall be given an opportunity to review his medical file in advance of the
4 hearing, and that shall include all of the documents included in the newly filed exhibit discussed
5 in this order. Plaintiff shall be given a *reasonable* time to review these records, and should be
6 permitted to take notes. Plaintiff shall also be given access to the records at the time of the
7 hearing so that he may reference them as necessary.

8 **D. Service**

9 Finally, the court notes that Defendants' opposition to Plaintiff's motion for temporary
10 restraining order/preliminary injunction was electronically served on Plaintiff in care of the
11 Lovelock Correctional Center (LCC) librarian, even though the docket reflects that Plaintiff is
12 housed at Northern Nevada Correctional Center (NNCC). Plaintiff appears to have nevertheless
13 received the filing, but in the future Defendants should take care to serve Plaintiff at his housing
14 facility of record. If there was a change in Plaintiff's housing assignment, it was incumbent upon
15 Plaintiff to file a notice of change of address.

16 **IT IS SO ORDERED.**

17 DATED: March 10, 2017.

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20 WILLIAM G. COBB
21 UNITED STATES MAGISTRATE JUDGE
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